

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VICENTE RODRIGUEZ, JOVITA
RODRIGUEZ, and GUADALUPE
FRANCO, on behalf of themselves
and others similarly situated,

Plaintiffs,

v.

ACL FARMS, INC., KEVIN B.
GAY, and WASHINGTON FARM
LABOR SOURCE, LLC,

Defendants.

NO. CV-10-3010-LRS

**ORDER GRANTING MOTION
FOR CLASS CERTIFICATION**

BEFORE THE COURT is the Plaintiffs' Motion For Class Certification (Ct. Rec. 38). This motion was heard with oral argument on November 9, 2010. Andrea Schmitt, Esq., argued for Plaintiffs. Brendan V. Monahan, Esq., argued for Defendants ACL Farms, Inc. and Kevin B. Gay. Christopher J. Mertens, Esq., argued for Defendant Washington Farm Labor Source, LLC (WA-FLS).

I. BACKGROUND

Plaintiffs allege that in 2008, Defendants unlawfully obtained approval for H-2A "guest workers" and denied agricultural employment to Plaintiffs and the class of workers they seek to represent. Plaintiff allege Defendant ACL Farms violated the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. §§ 1801-1872, by providing false or misleading information concerning the terms and conditions of employment and by failing to comply with the

**ORDER GRANTING MOTION
FOR CLASS CERTIFICATION - 1**

1 working arrangement. Plaintiffs allege Defendant WA-FLS violated
2 Washington's Farm Labor Contractors Act (FLCA), RCW Chapter 19.30, by
3 making or causing to be made false, fraudulent or misleading information
4 concerning the terms, conditions or existence of employment at ACL Farms.
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6 **II. DISCUSSION**

7 Plaintiffs seek an order certifying this matter as a class action designating a
8 class composed of all non-H2A farm workers who worked for ACL Farms at any
9 time from April 7, 2008 through August 20, 2008. Plaintiffs ask that the class be
10 certified pursuant to Fed. R. Civ. P. 23(b)(3) on the basis of a finding "that the
11 questions of law or fact common to class members predominate over any questions
12 affecting only individual members, and that a class action is superior to other
13 available methods for fairly and efficiently adjudicating the controversy." In
14 addition to making that finding in order to certify a class, the court must also
15 determine that certain prerequisites listed in Rule 23(a) have been met: (1) the
16 class is so numerous that joinder of all members is impracticable; (2) there are
17 questions of law or fact common to the class; (3) the claims or defenses of the
18 representative parties are typical of the claims or defenses of the class; and (4) the
19 representative parties will fairly and adequately protect the interests of the class.

20 The "numerosity" prerequisite of Rule 23(a) is met. Plaintiffs have
21 identified in excess of 130 putative class members employed by ACL Farms
22 during the relevant time period. Contrary to the contention of WA-FLS, the class
23 does not need to be limited to 70 members just because that was the number of
24 H2-A workers ACL Farms was authorized to hire. Even ACL Farms does not
25 make that argument. As Plaintiffs note, ACL Farms could have failed to inform
26 more than 70 workers of the Clearance Order and more than 70 workers could
27 have been harmed if WA-FLS overstated the number of H2-A workers needed.
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1 Plaintiffs recognize that the actual economic harm to the class is limited by the
2 total possible work available under the Clearance Order.

3 The “commonality” requirement is met. There are common questions of
4 law and/or fact as to liability which include the following: 1) whether ACL Farms
5 failed to offer and provide employment as promised in the Clearance Order to
6 class members while continuing to employ H-2A “guest workers”¹ ; 2) whether
7 ACL Farms had a practice of not informing class members of the opportunities
8 available under the Clearance Order, and if so, whether the advice of WA-FLS
9 caused ACL to adopt this practice; 3) whether WA-FLS overstated to U.S.
10 Department of Labor ACL Farms’ need for H2-A “guest workers;” and 4) whether
11 WA-FLS failed to comply with the terms of its agreement with ACL Farms.
12 These questions of law and/or fact are not only “common,” but “predominate”
13 over questions affecting individual members in the putative class.

14 Defendant ACL Farms concedes class litigation is appropriate with regard
15 to liability and statutory damages, but argues it is inappropriate with regard to
16 actual damages because “[a]ssessing and computing actual damages will require
17 an employee-by-employee analysis of such individual issues as actual earnings,
18 mitigation efforts, earning power, disciplinary issues (with later employers).” The
19 fact that damages vary from class member to class member does not itself defeat
20 certification. “The predominance requirement calls only for predominance, not
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22 ¹ ACL Farms admits it did not inform all of its employees of the terms and
23 conditions of the 2008 Clearance Order; that this constitutes a violation of AWP; and
24 that “there is a proper class of similarly situated persons who should have
25 received such notice.” ACL Farms acknowledges it was required to tell all
26 putative class members about the job opportunities available under the Clearance
27 Order and it does not matter whether those class members were already employed
28 by ACL Farms at the time of the H2-A application.

1 exclusivity, of common questions.” *In re Visa Check/MasterMoney Antitrust*
2 *Litig.*, 280 F.3d 124, 140 (2nd Cir. 2001). Damage calculations alone cannot defeat
3 certification. “The amount of damages is invariably an individual question and
4 does not defeat class action treatment.” *Yokoyama v. Midland Nat. Life Ins. Co.*,
5 594 F.3d 1087, 1094 (9th Cir. 2010), quoting *Blackie v. Barrack*, 524 F.2d 891,
6 905 (9th Cir. 1975). See also *Haywood v. Barnes*, 109 F.R.D. 568, 583 (E.D.N.C.
7 1986)(“The fact that the potential amount of damages might vary . . . does not
8 preclude class certification where common questions of law and fact as to liability
9 clearly predominate”). By separate order issued contemporaneously herewith, the
10 court is bifurcating this case into an initial liability and statutory damages phase
11 and a secondary actual damages phase. At the conclusion of the initial phase, the
12 court will consider creation of a subclass consisting of those class members who
13 elect to pursue actual damages in a secondary phase. See Fed. R. Civ. P. 23(c)(5).

14 Defendant WA-FLS objects to class certification, asserting that individual
15 factual and legal issues predominate in this case. The court concurs with Plaintiffs
16 that the majority of the individualized issues raised by WA-FLS relate to potential
17 affirmative defenses and damages calculations. As discussed above,
18 individualized questions about damages do not defeat class certification.
19 Furthermore, the fact affirmative defenses may be available against certain
20 prospective class members does not defeat class certification. *Smilow v.*
21 *Southwestern Bell Mobile Systems, Inc.*, 323 F.3d 32, 39 (1st Cir. 2003).

22 The “typicality” and “adequacy” prerequisites of Rule 23(a) are satisfied.
23 The “typicality” requirement of Rule 23(a) is that the claims or defenses of the
24 class representatives must be typical of the claims or defenses of the class. In
25 practice, the “commonality” and “typicality” requirements of Rule 23(a) tend to
26 merge as both serve as a guideposts for determining whether maintenance of a
27 class action is economical and whether the named plaintiffs’ claims and the class
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1 claims are so interrelated that the interests of the class members will be fairly and
2 adequately protected in their absence. *General Tel. Co. of Southwest v. Falcon*,
3 457 U.S. 147, 157, 102 S.Ct. 2364 n. 13 (1982). The claims of the purported class
4 representatives need not be identical to the claims of other class members, but the
5 class representative “must be part of the class and possess the same interest and
6 suffer the same injury as the class members.” *Id.* at 156. A plaintiff’s claim is
7 typical if it arises from the same event or practice or course of conduct that gives
8 rise to the claims of other class members, and is based on the same legal theory as
9 their claims. *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992). Here, the
10 named Plaintiffs have claims which are identical to the claims of other class
11 members.

12 The test for “adequacy” is whether: 1) the attorney representing the class is
13 qualified and competent; 2) the class representatives are not disqualified by
14 interests antagonistic to the remainder of the class; and 3) the named plaintiffs
15 must prosecute the action vigorously on behalf of the class. *In re Mego Fin’l*
16 *Corp. Secur. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000). Defendants do not dispute
17 that Columbia Legal Services is qualified and competent to represent the class.
18 For the reasons already discussed, the named Plaintiffs do not have interests which
19 are antagonistic to the remainder of the class.

20 Plaintiffs have demonstrated that all of the prerequisites of Rule 23(a)-
21 numerosity, commonality, typicality, and adequacy of representation- are met.
22 Furthermore, Plaintiffs have established, pursuant to Rule 23(b)(3), that questions
23 of law and/or fact common to the class “predominate” over questions affecting the
24 individual members and, on balance, a class action is “superior” to other methods
25 available for adjudicating the controversy. A class action is a “superior” method
26 for resolving individual claims here. None of the individual claims are of
27 significant value and, when viewed objectively, the absence of a class action
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1 would likely deter individual actions. The purposes of a class action are to avoid a
2 multiplicity of actions and to enable persons to assert small claims that would not
3 be litigated individually because the costs would far outweigh any recovery.

4 *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 349, 103 S.Ct. 2392 (1983).

6 **III. CONCLUSION**

7 Plaintiffs' Motion For Class Certification (Ct. Rec. 38) is **GRANTED**.
8 The Fed. R. Civ. P. 23(b)(3) class is composed of all non-H2A farm workers who
9 worked for ACL Farms at any time from April 7, 2008 through August 20, 2008.
10 Named Plaintiffs, Vicente Rodriguez, Jovita Rodriguez, and Guadalupe Franco,
11 are designated as representatives for the class. Columbia Legal Services is
12 appointed as class counsel pursuant to Fed. R. Civ. P. 23(g). The class claims,
13 issues, or defenses are as identified above.

14 Within ten (10) days from the date of this order, class counsel will serve and
15 file a proposed "Notice" to class members for the court's review and approval.
16 This "Notice" will comply with the requirements of Fed. R. Civ. P. 23(c)(2)(B).
17 Defendants will have ten (10) days from service of the proposed "Notice" to serve
18 and file any objections to the same. Class counsel will have five (5) days from
19 service of any objections to serve and file any reply to the same.

20 **IT IS SO ORDERED.** The District Court Executive is directed to
21 forward copies of this order to counsel of record.

22 **DATED** this 12th day of November, 2010.

23
24 *s/Lonny R. Suko*

25 LONNY R. SUKO
26 Chief United States District Court Judge
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